

BEFORE THE  
**Federal Communications Commission**  
 WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter )  
 )  
 An Allocation of Spectrum for the ) RM-9267  
 Private Mobile Radio Services )

TO: The Commission

**REPLY COMMENTS OF MRFAC, INC.**

MRFAC, Inc., by its counsel, hereby submits these reply comments in the above-captioned proceeding.

**INTRODUCTION**

MRFAC is a Commission-certified coordinator of 20 years' standing. From its origins as a part of the National Association of Manufacturers, MRFAC has maintained a close identity with the communications needs and interests of American manufacturers, large and small. MRFAC is also privileged to include within its membership numerous non-manufacturing firms. Besides its coordination services for Part 90 applicants, MRFAC is committed to advocacy for the concerns of true private radio users, both manufacturing and non-manufacturing businesses.

MRFAC supports the effort to secure an additional spectrum allocation for the communications needs of American business and industry. MRFAC comments separately at this time to stress certain points which are critical to appropriate consideration of the LMCC Petition.

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## **DISCUSSION**

**First.** While MRFAC supports the fundamental thrust of the Petition, it has reservations with respect to certain of the bands proposed for reallocation, i.e. the aeronautical band (960 - 1215 MHz) and the amateur band (420-450 MHz). With respect to the aeronautical band, this spectrum is used for Airborne Collision Avoidance Systems, Tactical Air Navigation, and Distance Measuring Equipment, among others. These systems are vital to the safety of the flying public. Moreover, it is likely to be years, if not decades, before these systems are replaced by successor, satellite-based technologies, especially on international routes. Spectrum allocated globally for Communications, Navigation, and Surveillance/Air Traffic Management (CNS/ATM) is rare and should be appropriately protected for the aeronautical community to use and reuse for future CNS/ATM applications. Accordingly, the RTCA document cited in the LMCC petition clearly recommends that “the band be retained for current and future aeronautical safety-critical navigation and surveillance applications”.<sup>1</sup> For these reasons, it would be inappropriate to pursue reallocation of this band.

With respect to the amateur band, MRFAC would note that numerous large industrial users are linked to amateur repeater networks for emergency disaster relief and public safety communications. This is especially the case with large industrial plants which provide fire and emergency medical services to nearby towns. Any consideration of reallocation of these frequencies should be undertaken only with measures for protection of existing amateur emergency communications systems.

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<sup>1</sup> RTCA, Spectrum Planning document at 72 (Rec. 7.3-4).

MRFAC takes note that the National Telecommunications and Information Administration has expressed opposition to the proposed 960-1215 and 420-450 MHz reallocations. Letter dated June 5, 1998 to Richard M. Smith from William T. Hatch. At the same time NTIA, like MRFAC, supports the Petition's basic concept; namely, that private radio needs additional spectrum. The Commission should view the LMCC Petition, therefore, as an effort to open a dialogue on the long-term needs of private radio users, rather than a precise blueprint for the means of satisfying those needs. Indeed, the basic purpose of the LMCC Petition is to address a spectrum shortfall which, if not properly resolved, could threaten the global competitiveness of U.S. industry.

Second. The relief sought should be tailored to meet the needs of true private radio users, i.e. those whose use of the spectrum is strictly for internal communications needs. Properly defined, private radio is limited to protecting the safety of the licensee's employees and property, and promoting the productivity and competitiveness of the licensee's business. Indeed, commonplace features of the industrial scene in America today, such as just-in-time-delivery of parts and supplies, would not have been possible without private radio. These process improvements have been integral to the growth in the productivity of American manufacturers, and the sound economy we enjoy today.

Unfortunately, what some loosely refer to as "private radio" includes many licensees whose use of the spectrum has little to do with internal communications needs, and much to do with providing communications services for hire to third parties. Indeed, it is largely because of the Commission's tolerance for the diversion of private

radio spectrum to commercial carrier services that true private radio users have the problem which makes additional allocations necessary.

The Commission should take care to ensure that the purpose of an additional spectrum is not circumvented by inadequate definition of the intended beneficiaries -- a class which should not include those who claim private radio eligibility only to divert the licensed channels to third party resale.

Third. The Commission should explore the use of efficiency-based spectrum lease fees in connection with an allocation of new spectrum. As explained previously by The Boeing Company, such fees, if properly structured, would be an incentive to use the spectrum more efficiently and would compensate the taxpayer for the use of the spectrum. See Boeing ex parte filing of February 21, 1997 in PR Docket No. 92-235.

While the Commission was granted private radio auction authority in the 1997 Balanced Budget Act, auctions are inherently problematic for true private radio licensees -- licensees which use radio in support of their core business, not for the provision of communications service to others. For communications carriers, wide area geographic coverage makes sense; for true private radio users, coverage requirements vary from business to business, plant to plant, and industrial campus to industrial campus. American manufacturers have no interest in bidding on wide-area licenses; nor are they comforted by the notion that, if they bid and win, they can disaggregate and partition spectrum. The transaction costs involved in that exercise are an immediate disincentive.<sup>2</sup>

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<sup>2</sup> For these reasons the comments of Cortland E. Richmond on the utility of auctions in the private radio context are misplaced. Id. at 2-4.

While auctions are inappropriate, other equitable value recovery techniques are not. In particular, efficiency-based spectrum lease fees would deal with two problems; i.e., federal revenues *and* business incentives, simultaneously: (1) lease fee revenues would provide a return to the taxpayer for the use of public property; and (2) lease fees would provide a useful spectrum management tool by providing incentives for more efficient use of radio facilities.<sup>3</sup>

For example, a lease fee structure could include factors such as the extent of coverage, the amount of bandwidth used, and whether spectrum-efficient technology is employed. The common denominator in all these is that spectrum efficiency be rewarded, spectrum inefficiency penalized.<sup>4</sup>

The Commission should look carefully at the efficiency-based lease fee concept in connection with its consideration of the requested new allocation.<sup>5</sup> Just as Congress authorized a trial of the auction process for commercial mobile radio licensing in 1993, so also the time is right for a trial of efficiency-based lease fees. This should be explored with Congress as the *quid pro quo* for licenses derived from a new allocation.

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<sup>3</sup> Tying the level of spectrum fees to anticipated (or historic) auction receipts would perpetuate the policies of the last several years -- policies have meant an abdication of sound spectrum management in favor of a purely budgetary approach. Such an approach misconceives the role of private spectrum in the competitiveness of American business and industry, and the importance of spectrum management in helping achieve that competitiveness.

<sup>4</sup> The Commission has previously taken comment on license fees in the re-farming docket. There has been a full opportunity for public comment on this proposal and the time is now ripe to initiate a more detailed consideration of the issue with Congress.


<sup>5</sup> MRFAC strongly opposes the imposition of license fees on existing licensees. Such users have already made their radio investment decisions; it would serve no efficiency purpose to impose fees on this class of users.

**CONCLUSION**

For the foregoing reasons MRFAC urges the Commission to initiate a proceeding which addresses the spectrum needs of true private radio users. In addition, the Commission should explore with Congress adoption of spectrum efficiency-based lease fees in connection with licenses issued for the new allocation.

Respectfully submitted,

MRFAC, INC.

  
William K. Keane

Arter & Hadden LLP  
Suite 400K  
1801 K Street, N. W.  
Washington, D. C. 20006-1301  
(202) 775-7100

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Its Counsel